

**TITLE**

Chapter 37. First Woman High Court Judge in England and Wales, Elizabeth Lane, 1965

**AUTHOR**

Bourne, Judith and Burton, Frances

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### **Elizabeth Lane: First woman to be appointed to the High Court (July 1965)\***

Elizabeth Lane was appointed a High Court judge<sup>1</sup> nearly forty years after Helena Normanton<sup>2</sup> made her symbolic entrance to an Inn of Court. This appointment appeared to be women's final acceptance in a profession that had been so resolutely closed to women. Lane (nee Coulborn) was born in 1905,<sup>3</sup> from (as she described) an upper middle class family.<sup>4</sup> She was called to the Bar in the summer of 1940, took Silk in 1960,<sup>5</sup> and in 1962 was invited to become England and Wales's first woman county court judge.<sup>6</sup> She was elevated to the High Court in 1965<sup>7</sup> thus becoming a women's legal landmark: a powerful female legal role model in a profession dominated by men, and the first full-time judge, a female representative in the judiciary. A major advance, since judges should not stand apart from the society in which they adjudicate, women are not a minority group and should be represented in the composition of the judiciary.<sup>8</sup>

Lane was educated at home by a governess until she was 11 or 12 years old<sup>9</sup> before being sent to Twizzletwig School<sup>10</sup> in Hindhead. At 15 she attended Malvern School for two years, where her only

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\*Dr Judith Bourne, St Mary's University, Twickenham; Dr Frances Burton, Buckinghamshire New University.

<sup>1</sup> Lane, E. *Hear the other side: Audi alteram partem The autobiography of England's first woman judge*, Butterworth 1985 p. 132.

<sup>2</sup> Joanne Workman, 'Normanton, Helena Florence (1882–1957)', *Oxford Dictionary of National Biography*, OUP, 2004; Bourne, J, *Helena Normanton and the Opening of the Bar to Women 2014* unpublished PhD thesis, KCL; Bourne, J *Helena Normanton and the Opening of the Bar to Women* Waterside Press forthcoming 2016

<sup>3</sup> Lane (n.1) p. 7.

<sup>4</sup> Ibid p. 7.

<sup>5</sup> Ibid p.101.

<sup>6</sup> Ibid p. 122.

<sup>7</sup> Ibid p. 132.

<sup>8</sup> Judicial Diversity, Constitution Committee, Contents, Chpt 3: Diversity:

<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/27206.htm>

<sup>9</sup> (Lane (n.1) p.17.

<sup>10</sup> ibid p. 18.

‘interest in life’ was hockey.<sup>11</sup> Having passed the ‘Higher Oxford’ she renounced education, leaving to ‘have a good time’.<sup>12</sup> In 1924 she journeyed to Canada to keep house for her brother and it was there she met her husband, (Henry Jerrold) Randall Lane.<sup>13</sup> They married in 1926.<sup>14</sup> It was her husband who decided to study for the Bar and suggested that she ought to join him, she was convinced she would never pass; that if she did, it would be a ‘miracle’ and that she would be ‘no good’ at it.<sup>15</sup>

After her call in 1940 Lane’s pupillage was arranged by Paul Sandlands KC, a Bencher at Inner Temple, with Geoffrey Howard (who would also become a county court judge).<sup>16</sup> She was told in no uncertain terms that she would not be able to remain there after her pupillage (although they would be able to find a tenancy for her elsewhere) as the Clerk would not wish to have a woman in chambers and as women were not considered a good ‘financial proposition’.<sup>17</sup> However she was asked to stay on. Immediately she joined the Midland Circuit<sup>18</sup> and, encouraged by Sandlands, set to work as a barrister in that region, a launch pad for any barristers who did not think they were likely to be able to make a career at the Bar in London – and of course she came from Cheshire. Like others who have taken that route she took any low grade work that was available, such as poor prisoners’ defences, divorces, and other basic poorly paid work, but quickly built up a practice.

Her first official appointment came in 1948 as a member of the Home Office Committee of Enquiry into the use of Depositions in Criminal Cases.<sup>19</sup> The fact that only 12 years later she was appointed

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<sup>11</sup> *ibid* p. 19.

<sup>12</sup> *ibid* p. 20.

<sup>13</sup> *ibid* p. 25.

<sup>14</sup> *ibid* p. 26.

<sup>15</sup> *ibid* p. 49.

<sup>16</sup> *ibid* p. 54.

<sup>17</sup> *ibid* p.55.

<sup>18</sup> *ibid* p. 57.

<sup>19</sup> *ibid* p. 79.

Queen's Counsel in 1960<sup>20</sup> is a testament to her work ethic, energy and drive as it was unusual to be appointed so quickly even for a man, and as such she was only the third woman Silk in England. This ethic can be seen in her work not just as a barrister but her roles as Chairman of the new Mental Health Tribunals (1960)<sup>21</sup> and Commissioner of the Crown at Manchester (1961), the equivalent of today's Deputy High Court Judges.<sup>22</sup> By the end of 1961 she was appointed the Recorder of Derby.<sup>23</sup>

Her work after her ground-breaking appointment to the High Court (Probate, Divorce & Admiralty Division) was not confined to judicial duties. In February 1971 she chaired the Committee to review the working of the Abortion Act 1967.<sup>24</sup> The unexpected recommendations of that committee are as important as were an endorsement of the Act.<sup>25</sup>

Of course as Lane J she became a Dame of the Order of the British Empire on her appointment to the High Court,<sup>26</sup> and a Bencher of Inner Temple,<sup>27</sup> as was usual upon any High Court appointment but it seems in her case the Inn did not immediately elevate her to the Bench without some discussion as she was Inner's first woman Bencher. She died in Winchester in 1988 after retiring in 1978.<sup>28</sup>

Lane J's appointment in 1965 comes amidst a decade of social change for both men and women. Precedent for female judges was limited: Sybil Campbell<sup>29</sup> was appointed to a salaried judicial post

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<sup>20</sup> *ibid* p.101, despite having being rejected on her first and only previous application in 1959, see page 100.

<sup>21</sup> *ibid* p.104.

<sup>22</sup> *ibid* p.106.

<sup>23</sup> *ibid* p.110.

<sup>24</sup> *ibid*, in 1971, p. 150.

<sup>25</sup> Wivel, A. "Abortion Policy and Politics on the Lane Committee of Enquiry, 1971-1974"; (1998) 11 (1): *Soc Hist med*, 109-135.

<sup>26</sup> *ibid*, p. 135.

<sup>27</sup> *ibid*, 136.

<sup>28</sup> Elizabeth Butler-Sloss, 'Lane, Dame Elizabeth Kathleen (1905–1988)', rev. *Oxford Dictionary of National Biography*, Oxford University Press, 2004

<sup>29</sup> Sybil Oldfield, 'Campbell, Sybil (1889–1977)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004

as metropolitan stipendiary magistrate in 1945. Dorothy Dix,<sup>30</sup> in 1946, became the first woman to preside over a jury trial (in her role as deputy recorder of Deal) and Rose Heilbron, in 1956, became a recorder in Burnley.<sup>31</sup>

1965 marked many significance social changes. That year Sir Winston Churchill died, a man who defined two world wars. The empire disappeared with the start of the independence uprising by Smith in Rhodesia. Comprehensive schools were introduced by Crosland's Circular 10/65<sup>32</sup>. Roy Jenkins took over at the Home Office with a liberal agenda: abolition of flogging in prisons, the legalisation of homosexuality and end to theatre censorship.<sup>33</sup> The public were shocked and outraged by the use of the word 'fuck' on the BBC by critic Kenneth Tynan,<sup>34</sup> the escape of Ronnie Biggs from prison<sup>35</sup> and the capture of the Moors murderers.<sup>36</sup>

This was the period of the second wave of feminism with women of all classes focusing on the workplace, sexuality and reproductive rights.<sup>37</sup> Fertility was revolutionised by the introduction of the pill in 1961 (only available to married women, but extended to single women in 1967).<sup>38</sup> Abortion was legalised by the 1967 Act. This had both positive and negative effects: women were able to control their own fertility<sup>39</sup> but at a price: health concerns, relieving men of the responsibility

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<sup>30</sup> See P. Polden, 'Portia's progress: women at the Bar in England, 1919–1939', (2005) 12 *International Journal of the Legal Profession*, 293–338.

<sup>31</sup> Brenda Hale, 'Heilbron, Dame Rose (1914-2005)', *Oxford Dictionary of National Biography*, Oxford University Press, Jan 2009; Hilary Heilbron, *Rose Heilbron: The Story of England's First Woman Queen's Counsel and Judge*, Hart, 2012..

<sup>32</sup> Roy Jenkins, 'Crosland, (Charles) Anthony Raven (1918–1977)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004.

<sup>33</sup> Campbell, J *Roy Jenkins* Random House, 2015, p. 260.

<sup>34</sup> *The Guardian* 5 February 2004, Philip Purser, 'Tynan, Kenneth Peacock (1927–1980)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004.

<sup>35</sup> *The Guardian* 9 July 1965.

<sup>36</sup> Williams, E. *Beyond belief: the moors murderers* Pan, 1992.

<sup>37</sup> Thane, P. *Unequal Britain: equalities in Britain since 1945*, A&C Black, 2010.

<sup>38</sup> Cook, H. *The long sexual revolution* OUP, 2004, p. 279.

<sup>39</sup> Weeks, J. *The world we have won: The remaking of the erotic and intimate life*, Routledge, 2007, p. 69.

of paternity, the imposition of heterosexuality as the 'norm' and the symbolising of women as sexually available.<sup>40</sup> Financially women became more enabled by the 1964 Married Women's Property Act revision, which allowed women legally to own the money they earned as well as the right to inherit property. Women's voices and their demand for equality were being heard, illustrated by the Ford machinists' strike in Dagenham (1968),<sup>41</sup> Barbara Castle's<sup>42</sup> appointment as First Secretary of State (1968).<sup>43</sup> The Sexual Offences Act 1967 allowed homosexual acts between consenting adults in a private place, introducing the advent of gay liberation.<sup>44</sup> The Divorce Reform Act 1969 made divorce easier with the introduction of 'irretrievable breakdown of marriage'.<sup>45</sup> Change was everywhere: in transport (Beeching severely cut down the rail network,<sup>46</sup> but the M4 was opened), the Race Relations Act 1965 was passed, and the first spacewalk was performed.<sup>47</sup>

Lane was never promoted to the Court of Appeal but (as was usual for retired male High Court judges) occasionally sat there after her retirement.<sup>48</sup> In 1974 Rose Heilbron QC joined her in the High Court. Lane's appointment appeared to represent the beginning of equality in the legal profession. However, fifty years on from 1965, women represent just 19% of judges sitting in the High Court.<sup>49</sup>

She did not intend to be a pioneer of any sort, nor to be a lawyer – whereas most other women of her time, both in the Law and other professions, set out to cut ice, crack (or preferably breach) glass

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<sup>40</sup> Campbell, B. *Wigan Pier revisited: Poverty and politics in the 80s*, Hachette UK, 2013.

<sup>41</sup> Taksa, L. *Rethinking Misbehaviour and Resistance in organisations*, Emerald group, 2012.

<sup>42</sup> Anthony Howard, 'Castle, Barbara Anne, Baroness Castle of Blackburn (1910–2002)', *Oxford Dictionary of National Biography*, Oxford University Press, Jan 2006.

<sup>43</sup> Hampton, J. *Disability and the Welfare State in Britain*, Policy Press, 2015, p. 183.

<sup>44</sup> Bamforth, N. *Sexuality, morals and Justice* A & C Black, 1997.

<sup>45</sup> Cretney, S. *Family Law in the twentieth century* OUP, 2011, p. 152.

<sup>46</sup> Beeching, R. *Development of the Major Railway Routes*, HMSO 1965.

<sup>47</sup> Alexi Leonov, see Ivanoich, G. S. *Salyut-The First Space Station* Springer, 2008, p. 113.

<sup>48</sup> Lane (n.1) p 155.

<sup>49</sup> <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/diversity/judicial-diversity-statistics-2015/>.

ceilings, and generally to push the boundaries of what women could previously do at the time that she lived. She was not a 1919 'first' like Gwyneth Bebb,<sup>50</sup> who courageously sued unsuccessfully for a declaration that she could join the legal profession, or Helena Normanton KC who wanted to be a lawyer from childhood.<sup>51</sup> In fact she was originally a fairly ordinary upper middle class girl from Cheshire where she was born, the daughter of an unsuccessful mill owner, who stumbled into a legal career.

She herself suggested that her success at the Bar was down to good health and stamina, a capacity for hard work, a good temper, her ability to conceal her true feelings, not becoming emotionally involved, a pleasing voice, and good luck.<sup>52</sup>

She is important for many reasons: a powerful female legal role model, the first full-time female judge, Chair of the 1971 committee to examine the working of the 1967 abortion law<sup>53</sup> and first female High Court judge. But her significance is much greater than this: she represents 'female justice' or rather the lack of it, which still persists 50 years after she was the first woman on the High Court Bench. The law should be impartial, independent of the executive and legislature: the judges who judge us should not stand apart from the society in which they adjudicate.<sup>54</sup> The reality of our justice system, as concluded by the 2012 House of Lords Constitution Committee, looking at diversity in judicial appointments lamented:<sup>55</sup> the stereotypical judge inhabiting a court room was white, male, and from a narrow social background.<sup>56</sup>

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<sup>50</sup>*Bebb v Law Society* [1914] Ch. 286.

<sup>51</sup> Judith Bourne, (n.2)

<sup>52</sup> Lane (n.1) pp 60-62.

<sup>53</sup> National Archives SA/ALR Papers of the Committee on the Working of the Abortion Act (The Lane Committee), 1971-1974.

<sup>54</sup> N.8

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*

**Further reading:**

Heilbron, H. *Rose Heilbron: The Story of England's first woman Queen's Counsel and Judge* Hart 2012.

Lane, E. *Hear the other side: Audi alteram partem: The autobiography of England's first woman judge*, Butterworth 1985.

P. Polden, 'Portia's progress: women at the Bar in England, 1919–1939', (2005) 12/3 *International Journal of the Legal Profession*, 293–338.